REMARKS

Claims 70-77, 80-89, 91-95 and 98-105 were pending in the application. By this paper, Applicant has amended Claims 80, 87, 89, 91, 94, and 103-105. Hence, Claims 70-77, 80-89, 91-95 and 98-105 are presented for examination herein.

§102 Rejections

Per page 2 of the Office Action, Claims 70 and 103 stand rejected under 35 U.S.C. §012(e) as being anticipated by Kwan, et al. (U.S. Patent Publication 2005/0060968; hereinafter referred to as "Kwan"). In response thereto, Applicant provides the following remarks.

Claim 70 – Applicant respectfully traverses the Examiner's §102 rejection of Claim 70 as being anticipated by Kwan.

Applicant notes that "*A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.*" *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP 2131.

The Examiner contends that Kwan discloses "*said saddle pad apparatus does not impede movement of the spinal column of said living subject by forming a space between said spinal column and said saddle pad apparatus (see figs. 3 & 4)...*" Applicant disagrees.

Applicant submits that Kwan does not expressly or inherently disclose the saddle pad apparatus not impeding movement of the spinal column of the living subject by forming a space between the spinal column and the saddle pad apparatus as disclosed in Claim 70. Rather, the apparatus disclosed in Kwan is intended to be placed on the back of an animal. As illustrated in Fig. 3 of Kwan, the dorsal area 17 is disposed along the spinal column of the animal when the apparatus 10 is placed on the animal's back. Nowhere does Kwan disclose forming a space between the spinal column and saddle pad as is recited in Claim 70. At Fig. 4 of Kwan, the raised area at the withers region of the saddle pad apparatus is illustrated. As shown, only a portion of the apparatus 10 is elevated above the spinal column of the animal. In other words, Fig. 4 does not illustrate the unimpeded movement of the spinal column of the animal by forming a space between the spinal column and the saddle pad apparatus. Instead, in Kwan movement of the spinal column is still substantially impeded by e.g., the dorsal portion 17 of the apparatus 10.

The Examiner further contends that Kwan discloses "*wherein said pads are placed at least partially within gaps or recesses in said withers region...Note that paragraph [0019] of Kwan teach that the pads 26 will occupy the relief area 34 upon compression, thus, the pads will be disposed or at least be "adapted" to cooperate with the gaps or recesses 34, 36.*" {emphasis added} Applicant disagrees.

Applicant respectfully submits that Kwan does not expressly or inherently disclose the pads being placed at least partially within gaps or recesses in the withers region. Rather, at e.g., paragraph [0019], Kwan states "*Pad 26 provides shock relief when relief area 34 is compressed to the point that pad 10 is in contact with the withers during riding.*" {emphasis added} In other words, the apparatus 10 (having pads 26) in Kwan *only* comes into contact with the withers region if the relief area 34 is compressed a sufficient amount. There is a respectfully a difference between affirmatively disposing pads in the withers gaps or recesses and pads coming into contact with the general withers area if and only if there is adequate compression.

The Examiner also argues that Kwan discloses "*said placement of said pads being such that said saddle and said saddle pad apparatus is raised at least partly off of only said withers region of said subject...*" Applicant disagrees.

Applicant respectfully submits that Kwan does not expressly or inherently disclose the placement of the pads being such that the saddle pad apparatus is raised. Rather, at paragraph [0018], Kwan discloses that "*Ductile element 20 allows the malleable area 15 to be shaped in a way that elevates saddle pad 10 away from withers 36. A rider or other user may bend ductile element 20 to a preferred shape for the saddle and withers height and width to provide a relief area 34 between pad 10 and horse withers 36.*" In other words, it is the ductile element 20 which enables the apparatus 10 to be raised and not the placement of the pads. Further, in Kwan the pads 26 are placed on the apparatus 10 so as to only come into contact with the withers area if there is adequate compression on the malleable area (see e.g., paragraph [0019]). Thus, Kwan does not disclose the placement of pads being such that the saddle pad apparatus is raised.

Accordingly, Applicant submits that Kwan does not expressly or inherently disclose all of the limitations of Claim 70. Thus, Claim 70 is respectfully not anticipated thereby.

Claim 103 – Applicant respectfully traverses the Examiner's §102 rejection of Claim 103 as being anticipated by Kwan.

The Examiner contends at page 3 of the Office Action that Kwan discloses "*said saddle pad apparatus does not impede movement of the spinal column of said living subject by forming a space between said spinal column and said saddle pad apparatus (separated by re. 17)...*" Applicant disagrees.

Applicant submits that Kwan does not expressly or inherently disclose the aforementioned limitation. Rather, the dorsal area 17 of the apparatus disclosed in Kwan is intended to be placed on the spinal column of the animal. Applicant can find no recitation in Kwan where the dorsal area 17 is intended to form a space between the saddle pad apparatus and the animal's spinal column as is recited in Claim 103. Applicant notes that at Fig. 4, although a raised area is given, the raised area is only at the withers region of the saddle pad apparatus; hence, Fig. 4 does not illustrate the unimpeded movement of the spinal column of the animal by forming a space between the entire spinal column and the saddle pad apparatus.

The Examiner further contends that Kwan discloses "*wherein each of said first and second pads...being disposed within a respective one of a withers region gap or recess... Note that paragraph [0019] of Kwan teach that the pads 26 will occupy the relief area 34 upon compression, thus, the pads will be disposed or at least be "adapted" to cooperate with the gaps or recesses 34, 36.*" {emphasis added} Applicant disagrees.

Applicant respectfully submits that Kwan does not expressly or inherently disclose the first and second pads being disposed within a respective one of a withers region gap or recess. Rather, at e.g., paragraph [0019], Kwan discloses embedding pads 26 "*near the apex of leading edge 14 of shell 12 between outer surface 18 and ductile element 20.*" In other words, the pads 26 are disposed within the saddle pad apparatus 10 at the malleable area 15, which per paragraph [0018] is elevated away from the withers. Hence, the pads in Kwan are not disposed within respective ones of the withers region gaps or recesses.

Furthermore, the pads only comes into contact with the withers region if the relief area 34 is compressed a sufficient amount. Kwan simply does not disclose placement of the pads in the withers region gaps or recesses.

However, in order to more clearly distinguish the invention of Claim 103 over the prior art, Applicant has, by this paper, amended the Claim to recite that disposing the first and second

pads within respective ones of the withers region gaps or recesses causes the saddle and saddle pad apparatus to be raised at least partly off of only the withers region of the subject. Support for this amendment may be found at, *inter alia*, page 24, lines 10-15 of Applicant's specification as filed.

Applicant respectfully submits that Kwan does not expressly or inherently disclose the aforementioned limitation. Specifically, Kwan discloses elevating the front portion of the saddle pad apparatus away from the withers via a malleable element which a user may bend to a preferred shape (see e.g., paragraph [0018]). In other words, in Kwan, it is the placement and adjustment of the malleable area 15 which causes the saddle and saddle pad apparatus to be elevated away from the withers region. Kwan in no way discloses that disposal of pads within withers region gaps or recesses causes the saddle and pad to be elevated away from the withers.

Therefore, Applicant respectfully submits that Claim 103 is not anticipated by Kwan, because the reference fails to expressly or inherently disclose all of the limitations of Claim 103 as amended.

§103 Rejections

1. Per page 4 of the Office Action Claims 71, 80, 81, 84, 98-100 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kwan in view of Woods (U.S. Patent No. 5,802,823; hereinafter referred to as "Woods"). In response thereto, Applicant provides the following remarks.

Claim 80 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 80 as being unpatentable over Kwan in view of Woods.

Applicant notes that "*To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.*" *In re Royka*, 490 F.2d 981 (CCPA 1974). See MPEP 2143.03.

The Examiner contends that Kwan discloses "*said pads being further disposed so as to elevate only a front portion of said saddle and said saddle pad apparatus...*" Applicant disagrees.

Applicant submits that Kwan does not teach or suggest the pads being disposed so as to elevate only a front portion of the saddle and saddle pad apparatus. Rather, in Kwan, the front portion of the saddle and saddle pad apparatus are elevated by bending the ductile element 20 to a preferred shape away from the withers (see e.g., paragraph [0018]). The pads in Kwan merely provide shock relief if the malleable area 15 is compressed to a point where the saddle pad

apparatus comes into contact with the animal (see e.g., paragraph [0019]). Thus, in Kwan, the pads are disposed within the malleable area and are only engaged in the withers area when there is adequate compression. Nowhere does Kwan disclose the pads being disposed so as to elevate the front portion of the saddle and saddle pad apparatus.

The Examiner further contends that Kwan discloses "*elevate only a front portion of said saddle and saddle pad apparatus during riding while maintaining said substantial stability around said axis.*" Applicant disagrees.

Applicant submits that Kwan does not teach or suggest elevating a front portion of the saddle and saddle pad apparatus during riding while maintaining substantial stability about the axis. In Kwan, a front portion of the saddle and saddle pad apparatus are elevated via bending the ductile element into a desired shape away from the withers region (see e.g., paragraph [0018]). It is noted that whenever one portion of the apparatus is elevated, a rider may experience instability about a rotational axis transverse to the longitudinal axis of the spinal column of the subject (e.g., rocking). Nowhere does Kwan teach or suggest maintaining substantial stability; e.g., providing a mechanism for reducing rocking which may result from the raised front portion. In the invention of Claim 80, the pads are disposed so as to elevate a front portion of the saddle and saddle pad apparatus. In other words, while elevated, the saddle pad and saddle pad apparatus are supported, thus maintaining stability around the axis.

However, in order to more clearly distinguish the invention of Claim 80 over the prior art, Applicant has by this paper amended Claim 80 to recite the pads further being disposed *only* within individual ones of withers region recesses of the subject. Support for this amendment may be found at, *inter alia*, page 28, lines 14-17 of Applicant's specification as filed.

Applicant submits that neither Kwan nor Woods whether teaches or suggests the pads being disposed only within individual ones of withers region recesses. Specifically, Applicant submits that the pads 26 disclosed in Kwan per Fig. 4 and paragraph [0019] come into contact with the entire withers region upon over compression of the malleable area, and not only with the withers region recess. This fact is evident given the size and shape of the pads 26, as well as their discussion at paragraph [0019] as being utilized for affording protection to the withers 36 "*against injury from the saddle and ductile element 20*" upon over-compression of the relief area 34. In other words, the pads 26 in Kwan are of particular shape and size so as to protect the animal from the ductile element 20 which extends across the entire withers region (see e.g., Fig. 4). Hence, the pads

26 in Kwan are not disposed only within individual ones of withers region recesses as is now recited in Claim 80.

Applicant further notes that "*[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103.*" *In re Sponnable*, 405 F.2d 578, 585 (CCPA 1969). See MPEP 2141.02. The precise problem identified and solved by the invention of Claim 80 relates to elevating the saddle and saddle pad apparatus away from the withers of the animal while still maintaining stability for a rider. The teachings of Kwan are merely aimed at removing pressure from the withers area of the animal. Kwan in no way recognizes the problem identified and solved by the invention of Claim 80.

Applicant respectfully submits that Kwan and/or Woods, whether taken alone or in combination, fail to teach or suggest all of the limitations of Claim 80, thus Claim 80 is not rendered unpatentable thereby. Further, Kwan does not appreciate the precise problem recognized and solved by the invention of Claim 80 thereby providing another independent basis for the patentability of Claim 80.

Claims 71, 81, 84, 98-100 – Applicant respectfully submits that the Examiner's rejections of dependent Claims 71, 81, 84, 98-100 are rendered moot, given the arguments discussed above with respect to independent Claims 70 and 80.

2. Per page 8 of the Office Action, Claims 72-75 and 91-93 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kwan in view of Vasko, et al. (U.S. Patent No. 4,683,709; hereinafter referred to as "Vasko"). In response thereto, Applicant provides the following remarks.

Claim 91 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 91 as being unpatentable over Kwan in view of Vasko.

The Examiner contends that Kwan discloses "*wherein said pad element is particularly shaped to accommodate and fit substantially within a particular withers region recess on the*

anatomy of an animal on which said pad element and saddle pad is utilized." Applicant disagrees.

Applicant submits that Kwan does not disclose pad elements particularly shaped to accommodate and fit substantially within a particular withers region recess. Rather, at e.g., paragraph [0019] Kwan discloses "*secondary pad 26 may be flat and afford further protection to the withers 36 against injury from the saddle and ductile element 20... Pad 26 provides shock relief when relief area 34 is compressed to the point that pad 10 is in contact with the withers during riding.*" In other words, Kwan merely discloses that under increased compression of the malleable area 15, the pad 26 may provide relief to the withers. The relief provided to the withers in Kwan is not described as the pad 26 fitting substantially within the withers region recess. But rather, per Kwan Fig. 4, it appears that under the compression described at paragraph [0019], the pad 26 would cover the entire withers area. Stated differently, the pad 26 disclose and illustrated in Kwan is simply too large to fit substantially within a withers region recess and instead is adapted to provide shock relief over the entire relief area 34 (an area covering substantially all of the withers area and not simply the withers region recess). Therefore, Kwan simply does not disclose the pad 26 being particularly shaped to fit substantially within the withers region recess.

However, in order to more clearly distinguish the invention of Claim 91 over the prior art, Applicant has by this paper amended Claim 91 to recite wherein continuous placement of the pad substantially within the withers region recess results in substantial lift of a saddle and saddle pad placed thereon away from the withers region while maintaining balance and stability of the saddle for the user. Support for this amendment may be found at, *inter alia*, page 24, lines 10-15 and page 25, lines 12-24 of Applicant's specification as filed.

Applicant respectfully submits that neither Kwan nor Vasko teaches or suggests placement of the pad substantially within the withers region recess. Rather, Kwan merely discloses placement of the pad 26 in the malleable area 15 of the saddle pad (see e.g., Kwan Fig. 2). As noted above, per paragraph [0019], the pad 26 only comes into contact with the withers area when the relief area 34 is compressed; further Kwan does not disclose the pad 26 being placed substantially within the withers region recess and as illustrated in Fig. 4, it appears the pad 26 is simply not shaped or sized correctly to fit substantially within the withers region recess. However, even if one assumes, *arguendo* that the pad 26 is placed substantially within the withers region recess (a point which Applicant does not concede), the pad 26 is not continuously

placed within the withers region recess as now recited in Claim 91. Rather, the pad 26 is only placed within the recess, if at all, during compression of the apparatus (see paragraph [0019]).

Applicant further submits that neither Kwan nor Vasko teaches or suggests the placement of the pad resulting in substantial lift of a saddle and saddle pad placed thereon away from the withers region. Although Kwan discloses elevation of the saddle and saddle pad away from the withers region, the elevation thereof is the result of the user bending the ductile element into a preferred shape. The elevation in Kwan is simply not disclosed as being the result of the placement of pads in the withers region recess. Rather, the pads 26 in Kwan are merely a back-up mechanism for protecting the animal in the instance the malleable area 15 is over compressed, the pad placement has no effect on the elevation of the saddle and saddle pad in Kwan.

Still further, Applicant submits that neither reference cited by the Examiner teaches or suggests maintaining balance and stability of the saddle for the user. In Kwan, a front portion of the saddle and saddle pad apparatus are elevated (see e.g., paragraph [0018]), it is noted that the elevation of the front portion of the apparatus may cause the user to experience imbalance and instability. Nowhere does Kwan address maintaining balance and stability for the user. Furthermore, Kwan only addresses imbalance with respect to the animal (see e.g., paragraph [0006]). Claim 91, as amended specifically discloses maintaining balance and stability of the saddle for the user given the placement of the pads as lifting a portion of the saddle and saddle pad apparatus.

Applicant further notes that per *In re Sponnable*, (discussed *supra*) and MPEP 2141.02, a patentable invention may lie in the discovery of the source of a problem. The precise problem identified and solved by the invention of Claim 91 relates to lifting the saddle and saddle pad apparatus off of the withers while maintaining balance and stability of the saddle for a user. Kwan is merely aimed at removing pressure from the withers area of the animal. Kwan in no way recognizes the problem identified and solved by the invention of Claim 91, thereby providing another independent basis for refuting the Examiner's argument of unpatentability.

Accordingly, Applicant submits that neither Kwan nor Vasko whether taken alone or in combination teaches or suggests all of the limitations of Claim 91 as amended herein. Therefore, Claim 91 is not rendered unpatentable thereby.

Claims 72-75 – Applicant respectfully submits that the Examiner's rejections of dependent Claims 72-75 are rendered moot, given the arguments discussed above with respect to independent Claim 70.

Claims 92-93 – Applicant respectfully submits that the Examiner's rejections of dependent Claims 92-93 are rendered moot, given the arguments and amendments discussed above with respect to independent Claim 91.

3. Per pages 11, 12, and 13 of the Office Action Claims 76-77, 82-83, 85-89, 94-95, 101-102, and 104-105 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kwan in view of Woods, and further in view of Vasko. In response thereto, Applicant provides the following remarks.

Claim 87 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 87 as being unpatentable over Kwan in view of Woods and Vasko.

The Examiner contends that Kwan discloses "*...said pad elements straddling the spine of said equine at a distance whereby said saddle pad is not in contact with the spinal column of said equine during riding...Note also that pads 26 do not meet each other or do not extend into the middle area 17, according to figs. 3 & 4.*" Applicant disagrees.

Applicant respectfully submits that Kwan fails to teach or suggest the saddle pad not in contact with the spinal column of the equine during riding. It appears from the Examiner's argument (reproduced above), that the Examiner believes that the pads 26 in Kwan correlate to the pad elements of Claim 87, and that theses do not extend into the dorsal area 17 as illustrated in Figs. 3 and 4. In other words, the Examiner argues that the pad elements in Kwan (pads 26) straddle the spine of the equine and are not in contact with the spinal column. Applicant submits that even if the Examiner's assertions are correct (a point which Applicant does not necessarily concede), nowhere does Kwan teach or suggest the saddle pad (i.e., saddle pad 10 in Kwan) not in contact with the spinal column of the equine during riding. In other words, the invention of Claim 87 regards pad elements being placed on either side of the animal's spine so as to ensure the saddle pad itself does not make contact with the spinal column. Kwan simply does not disclose the dorsal area 17 of the pad apparatus 10 not in contact with the animal's spine.

However, in order to more clearly distinguish the invention of Claim 87, Applicant has by this paper amended Claim 87 to recite the pad elements straddling the spine of the equine thereby causing the saddle pad apparatus to avoid contact with the spinal column of the equine during riding. Support for this amendment may be found at, *inter alia*, page 23, line 21 – page 24, line 1 of Applicant's specification as filed.

Applicant respectfully submits that Kwan, Woods, and/or Vasko do not teach or suggest the pad elements straddling the spine thereby causing the saddle pad apparatus to avoid contact with the spinal column. Rather, as noted above, even if one were to assume the pads 26 in Kwan straddle the spine of the animal, nowhere does Kwan disclose the fact that they straddle the spine causing the entire apparatus (e.g., saddle pad 10) to avoid contact with the spinal column. This is primarily due to the fact that the pads 26 are placed in the malleable area 15 which, per paragraph [0018] is lifted away from the body of the animal. Thus, the pads 26 will not be in contact with the body of the animal, and will have no effect on whether the saddle pad apparatus 10 is lifted away from the spinal column. Furthermore, nowhere does Kwan disclose the dorsal area 17 not being in contact with the spinal column.

The Examiner further argues that Kwan discloses "*...wherein said pad elements are disposed and configured to substantially fill respective ones of gaps that occur on the anatomy of said high-withered equine in its withers region...Note that paragraph [0019] of Kwan, et al. teach that the pads 26 will occupy the relief area 34 upon compression, thus, the pads will be disposed or at least be adapted to cooperate with the gaps or recesses 34, 36.*" Applicant disagrees.

Applicant submits that Kwan, Woods, and/or Vasko do not disclose the pad elements disposed and configured to fill respective ones of gaps that occur on the anatomy of a high-withered equine in its withers region. Rather, as illustrated in e.g., Kwan Fig. 4, the pads 26 are disposed at a malleable area 15 of the saddle pad 10 which, per paragraph [0018] is bent away from the body of the animal. However, in order to more clearly distinguish the invention of Claim 87 over the prior art, Applicant has amended the claim to recite the pad elements disposed and configured to fill respective ones of gaps that occur on the anatomy of a high-withered equine in its withers region continuously during riding. Support for this amendment may be found at, *inter alia*, page 28, lines 13-19 of Applicant's specification as filed.

Applicant respectfully submits that none of the prior art cited by the Examiner discloses the aforementioned limitation. Rather, as indicated above, the pads 26 in Kwan are disposed at an area which, during riding is not in contact with the body of the animal. The pads 26 are only in contact with the animal if the relief area 34 is compressed (i.e., not continuously). Hence, the pads 26 are not disposed and configured to fill respective ones of gaps that occur in the anatomy of a high-withered equine in its withers region continuously during riding.

Therefore, Applicant submits that none of the prior art cited by the Examiner, including Kwan, Woods and/or Vasko, whether taken alone or in combination teaches or suggests all of the limitations of Claim 87 as amended. Hence, Claim 87 is not rendered unpatentable thereby.

Claim 89 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 89 as being unpatentable over Kwan in view of Woods and Vasko.

The Examiner contends that Kwan discloses "*...movement of the spine of said equine is substantially unimpeded by said saddle and said pad elements during riding...*" Applicant disagrees.

Applicant notes that the Examiner has provided no citation to where Kwan teaches or suggests the aforementioned limitation. Further, Applicant can find no teaching or suggestion in Kwan directed to unimpeded movement of the spine of the equine by the saddle and saddle pad during riding. Rather, Kwan merely discloses a dorsal area 17 of the saddle pad apparatus 10; there is no indication in Kwan that the dorsal area 17 does not impede movement of the spine.

However, to more clearly distinguish the invention of Claim 89 over the prior art, Applicant has by this paper amended the claim to recite limitations relating to the saddle pad elements supporting the saddle and the saddle pad above the spine of the equine thereby creating a spinal channel, the spinal channel enabling substantially unimpeded movement of the spine. Support for this amendment may be found at, *inter alia*, page 22, line 30 – page 23, line 7 of Applicant's specification as filed.

Applicant submits that none of Kwan, Woods and/or Vasko teaches or suggests saddle pad elements supporting the saddle and the saddle pad above the spine to create a spinal channel, the spinal channel enabling substantially unimpeded movement of the spine as now recited in Claim 89. Rather, the pad elements 26 in Kwan merely protect the withers 36 against injury from the saddle and ductile element 20 if relief area 34 is compressed to the point that pad 10 is in contact

with the withers during riding (see e.g., paragraph [0019]). Nowhere are the pads disclosed as supporting the saddle above the spine thereby creating a spinal channel. Further, nowhere does Kwan disclose enabling substantially unimpeded movement of the spine.

The Examiner further argues that Kwan discloses "*wherein the pad elements are adapted to interface only with gaps formed in the withers region of the equine so as to prop up only a front portion of said saddle and saddle pad...*" Applicant disagrees.

Applicant submits that Kwan does not teach or suggest pad element adapted to interface only with gaps formed in the withers region. Rather, in Kwan, the pads 26 are interface, if at all, with the entire withers region. For example, at e.g., Fig. 4, the size, shape, and placement of the pads 26 necessarily results, upon compression of the relief area 34, in the pads 26 interfacing with the entire withers area, not only the gaps formed in the withers region. Further, as indicated at paragraph [0019], the pads 26 protect the withers 36 against injury from the saddle and ductile element 20. The ductile element 20, as illustrated in Fig. 4, expands across the entire withers region; thus protection of the withers against injury requires the pads 26 to be large enough to interface not only with the gaps in the withers region, but with the entire region itself. Therefore, Kwan does not teach or suggest pad elements interfacing only with withers gaps.

Applicant further submits that Kwan does not teach or suggest the pad elements propping up only a front portion of the saddle and saddle pad as disclosed in Claim 89. However, to more clearly distinguish the invention of Claim 89, Applicant has by this paper amended the claim to recite the pad elements configured to prop up only a front portion of the saddle and saddle pad. Support for this amendment may be found at, *inter alia*, page 24, lines 10-15 of Applicant's specification as filed. The pad elements in Kwan (pads 26) are not in any way configured to prop up the saddle and saddle pad. Rather, as noted above, these are merely adapted to protect the withers from injury upon compression of the relief area 34. The saddle and saddle pad in Kwan are propped up via bending of the ductile element 20 (see e.g., paragraph [0018]).

Therefore, Applicant respectfully submits that the prior art, including Kwan, Woods and Vasko, do not teach or suggest all of the limitations of Claim 89. Thus, Claim 89 is not rendered unpatentable thereby.

Claim 94 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 94 as being unpatentable over Kwan in view of Woods and Vasko.

The Examiner argues that Kwan discloses "*said pad elements and said pad... cooperatively form a raised feature element to raise only a frontal portion of a saddle and said apparatus*." Applicant disagrees.

Applicant submits that Kwan fails to teach or suggest the aforementioned limitation. Specifically, Kwan discloses a saddle pad apparatus 10 which has a malleable area 15. Per paragraph [0018], a portion of the apparatus 10 may be elevated away from the withers 36 by bending a ductile element 20 in the malleable area 15. Although the malleable area 15 comprises pads 26, per paragraph [0019], the pads are merely secondary support in the instance the relief area 34 created by bending the ductile element 20 is compressed. Any raised feature in Kwan is the result of the user bending the ductile element 20, and not in any way related to the pads 26.

By this paper, Applicant has amended Claim 94 to recite the pad elements disposed only within gaps created by the withers region continuously throughout riding. Support for this amendment may be found at, *inter alia*, page 24, lines 10-15 of Applicant's specification as filed.

Applicant respectfully submits that none of Kwan, Woods, and/or Vasko teaches or suggests pad elements being disposed only within gaps created by the withers region continuously throughout riding. Specifically, Kwan discloses pads 26 which, per paragraph [0019] protect the withers 36 against injury from the saddle and ductile element 20. Thus, the pads 26 must be disposed so as to protect the entire withers area 36. Further, as illustrated in Fig. 4, the pads 26 are sized and shaped so that upon compression the entire withers area 36 is protected. Hence, the pads 26 are not disposed only within gaps created by the withers region (but rather are disposed across the entire region).

Applicant further notes that even if one were to assume, *arguendo*, that the pads 26 are disposed only within the wither's gaps (a point which Applicant does not concede), the pads 26 are not continuously throughout riding disposed therein. Rather, during riding, the pads 26 in Kwan are disposed at an area which is not in contact with the body of the animal unless there is significant compression of the relief area 34. Stated differently, the pads 26 are in a portion of the apparatus 10 which is elevated away from the withers (see e.g., paragraph [0018] and Figs. 2 and 3). Therefore, the pads 26 are not disposed in the gaps created by the withers region continuously throughout riding.

Since all of the limitations of Claim 94 as amended are not taught or suggested by the prior art, Applicant submits that Claim 94 is not rendered unpatentable.

Claim 104 – By this paper, Applicant has amended Claim 104 to recite (i) a second plurality of pad elements disposed within respective ones of a plurality of gaps and comprising a three dimensional profile, the three dimensional profile fitting only within respective ones of the gaps; and (ii) the second plurality of pad elements continuously disposed within the plurality of gaps and causing at least a front portion of the saddle pad and the saddle to be continuously elevated away from the withers. Support for these amendments may be found at, *inter alia*, page 24, lines 10-15, page 25, lines 12-18, and page 28, lines 14-17 of Applicant's specification as filed.

Applicant respectfully submits that none of Kwan, Woods and/or Vasko teaches or suggests the aforementioned limitations. None of the aforementioned prior art teaches or suggests a second plurality of pad elements disposed within respective ones of a plurality of gaps and comprising a three dimensional profile, the three dimensional profile fitting only within respective ones of the gaps. Rather, Kwan merely discloses pads which, when the saddle pad 10 is over-compressed are adapted to prevent injury to the withers area 36 from the saddle and ductile elements (see e.g., paragraph [0019]). As is illustrated at Kwan Fig. 4, the pads are shaped and sized to come into contact with the entire withers region upon over-compression of the malleable area, and not only with the withers region recess. Further, in order to protect the animal from injury from the ductile element, which in Fig. 4 extends across the entire withers region, the pads 26 must also extend across the entire region.

Applicant further submits that none of the aforementioned prior art teaches or suggests pad elements continuously disposed within the plurality of gaps. Even if one assumes, *arguendo*, that the pads 26 in Kwan are disposed within the plurality of withers gaps (a point which Applicant does not necessarily concede), these are disclosed as only being in contact with the withers area upon compression of the malleable area (see e.g., paragraph [0019]). In other words, the pads are not disclosed as being continuously disposed within the withers gaps in Kwan but are, if at all, in contact therewith only upon over-compression of the apparatus.

Applicant further submits that the prior art cited by the Examiner does not teach or suggest the pad elements causing at least a front portion of the saddle pad and the saddle to be continuously elevated away from the withers as now recited in Claim 104. Rather, Kwan merely discloses a user adjusting the ductile element of the malleable area in order to pull the front portion of the saddle and saddle pad away from the withers of the animal (see e.g., paragraph [0018]). Thus,

it is the physical qualities of the ductile element and malleable area that cause the saddle and saddle pad to be elevated and not the pads.

Therefore, Applicant respectfully submits that, because none of Kwan, Woods, and/or Vasko teaches or suggests all of the limitations of Claim 104, Claim 104 is not rendered obvious thereby.

Claim 105 – Applicant respectfully traverses the Examiner's §103 rejection of Claim 105 as being unpatentable over Kwan in view of Woods and further in view of Vasko.

At page 21 of the Office Action, the Examiner contends that Kwan discloses a "*plurality of pad elements 26 disposed between said first and second flexible elements, said plurality of pad elements ... adapted to straddle the spine of said equine ... sufficiently distant from said spine such that the movement of the spine of said equine is substantially unimpeded by said saddle and said pad elements during riding...*" Applicant disagrees.

Applicant submits that Kwan does not teach or suggest the movement of the spine of the equine being substantially unimpeded by the saddle during riding. Rather, the pads in Kwan are disposed at a location which per paragraph [0018] is raised off of the body of the animal (i.e., the pads are disposed in the malleable area). It appears the Examiner believes that these pad elements 26 straddle the spine of the equine. Assuming *aruguendo* the Examiner's belief to be correct (a point which Applicant does not necessarily concede), nowhere does Kwan teach or suggest unimpeded movement of the spine of the equine. Rather, despite the placement of the pads 26 as straddling the spine, the saddle pad in Kwan is in contact with the spinal column of the equine during riding (see dorsal area 17 illustrated in Fig. 4).

However, in order to more clearly distinguish the invention of Claim 105, Applicant has amended the claim to recite a first group of the plurality of pad elements supporting the saddle and the saddle pad above the spine of the equine thereby creating a spinal channel, said spinal channel enabling the movement of the spine of said equine to be substantially unimpeded. Support for this amendment may be found at, *inter alia*, page 23, line 21 – page 24, line 1 of Applicant's specification as filed. As noted above, the saddle pad 10 in Kwan is in contact with the spine of the equine along dorsal area 17. Nowhere does Kwan disclose pad elements supporting the saddle and the saddle pad above the spine of the equine thereby creating a spinal channel as now recited in Claim 105.

The Examiner further contends that Kwan discloses "*wherein said pad elements comprise a profile (the pad having depth, length, width to create a 3-D object) that interface only with gaps formed in the withers region of said equine so as to prop up only a front portion of said saddle and saddle pad.*" Applicant disagrees.

Applicant submits that Kwan does not teach or suggest pad elements interfacing only with gaps formed in the withers region. Rather, the pads 26 in Kwan are adapted to interface with the entire withers area (see e.g. Fig 4 and paragraph [0019]) so as to protect the area from the ductile element (which transverses the entire area) if the malleable area is compressed. However in order to further distinguish the invention of Claim 105 over the prior art, Applicant has by this paper amended the claim to recite the pad elements interfacing continuously only with the gaps formed in the withers region. Support for this amendment may be found at, *inter alia*, page 24, lines 10-15 of Applicant's specification as filed. Even if one assumes, *arguendo* that the pads 26 in Kwan interface only with gaps formed in the withers region (a point which Applicant does not concede), the pads 26 are not continuously interfacing therewith as now recited in Claim 105. Rather, the pads 26 only interface with the gaps, if at all, during compression of the apparatus (see paragraph [0019]).

In order to still further distinguish Claim 105 over the prior art, by this paper, Applicant has amended Claim 105 to recite that the placement of the pad elements substantially causes the saddle and saddle pad to be propped up. Support for this amendment may be found at, *inter alia*, page 23, lines 2-7 and page 24, lines 10-15 of Applicant's specification as filed. Applicant submits that in Kwan, the saddle and saddle pad are elevated away from the withers region of the animal due to bending of the ductile element (see e.g., paragraph [0018]). In other words, Kwan merely discloses elevation due to the placement (or shape) of the ductile elements. The placement of the pads 26 also disposed in the malleable area does not substantially cause the saddle nor the saddle pad in Kwan to be propped up.

By this paper, Applicant has also amended Claim 105 to recite the plurality of pad elements cooperate to maintain balance and stability of the saddle for a rider. Support for this amendment may be found at, *inter alia*, page 24, lines 10-15 and page 25, lines 12-24 of Applicant's specification as filed.

Applicant submits that none of the references cited by the Examiner teaches or suggests the aforementioned limitation. Specifically, Kwan fails to teach or suggest the plurality of pad

elements cooperating to maintain balance and stability of the saddle for the rider. Kwan discloses a front portion of the saddle and saddle pad apparatus being elevated at e.g., paragraph [0018]. Applicant notes that elevating only a portion of the saddle and saddle pad may cause the user to experience imbalance and instability, nowhere does Kwan address maintaining balance and stability for the user.

As indicated above, none of the references cited by the Examiner whether taken alone or in combination teaches or suggests all of the limitations of Claim 105 as amended herein. Therefore, Claim 105 is not rendered unpatentable.

Applicant further notes that per *In re Sponnable* and MPEP 2141.02 (see above), a patentable invention may lie in the discovery of the source of a problem. The precise problem identified and solved by the invention of Claim 105 relates to lifting the saddle and saddle pad apparatus off of the withers while maintaining balance and stability of the saddle for a user. Kwan is merely aimed at removing pressure from the withers area of the animal. Kwan in no way recognizes the problem identified and solved by the invention of Claim 105, thereby providing another independent basis for refuting the Examiner's argument of unpatentability.

Claims 76-77 – Applicant respectfully submits that the Examiner's rejections of dependent Claims 76-77 are rendered moot, given the arguments discussed above with respect to independent Claim 70.

Claims 82-83, 85-86, 88, 95, and 101-102 – Applicant respectfully submits that the Examiner's rejections of dependent Claims 82-83, 85-86, 88, 95, and 101-102 are rendered moot, given the arguments and amendments discussed above with respect to independent Claims 80, 87 and 94.

Other Remarks

Applicant hereby specifically reserves the all rights of appeal (including those under the Pre-Appeal Brief Pilot Program), as well as the right to prosecute claims of different or broader scope (including those of non-elected inventions) in a continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for

purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

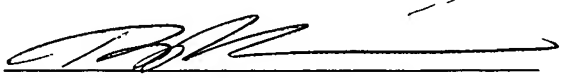
Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES, PC

Dated: June 23, 2009

By: 

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